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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Iraq

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the attached interim report prepared by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq, in accordance with paragraph 14 of Commission on Human Rights resolution 1995/76 of 8 March 1995 and Economic and Social Council decision 1995/286 of 25 July 1995.



ANNEX

Interim report on the situation of human rights in Iraq,
prepared by Mr. Max van der Stoep, Special Rapporteur of
the Commission on Human Rights, in accordance with
Commission resolution 1995/76 and Economic and Social
Council decision 1995/286

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I. INTRODUCTION

1. In accordance with paragraph 15 of Commission on Human Rights resolution 1995/76 of 8 March 1995, as approved by Economic and Social Council decision 1995/286 of 25 July 1995, the present report constitutes the interim report of the Special Rapporteur on the situation of human rights in Iraq. The final report will be submitted to the Commission on Human Rights at its fifty-second session.

2. In carrying out his mandate, the Special Rapporteur has again examined a wide range of information pertaining to general and specific allegations submitted through testimony and in documentary form, including script, photographs and video recordings. However, direct access to locations within Iraq has again not been possible owing to the Government's refusal so far to cooperate with the United Nations in receiving a return visit of the Special Rapporteur to Iraq or to accept the stationing of human rights monitors throughout Iraq pursuant to resolutions of the General Assembly and the Commission on Human Rights.

3. In implementation of paragraph 12 of Commission on Human Rights resolution 1995/76 regarding the sending of human rights monitors "to such locations as would facilitate improved information flows and assessment and would help in the independent verification of reports on the situation of human rights in Iraq", and taking into account the Government of Iraq's refusal to cooperate in the placement of human rights monitors inside Iraq, the Special Rapporteur requested the sending of staff members of the Centre for Human Rights to Kuwait and Lebanon. These locations were chosen because of the possibility of obtaining relevant information from persons there who claim to be victims of, or eyewitnesses to, human rights violations committed by the Government of Iraq.

4. The first mission referred to above took place from 22 to 30 June 1995, when two staff members from the Centre for Human Rights travelled to Kuwait in order to follow up on the Special Rapporteur's continuing concern for Kuwaiti and third-country nationals who disappeared in the custody of Iraqi authorities during the illegal occupation of Kuwait in 1990 and 1991 (see, in particular, A/49/651, paras. 12-33 and 99) and, at the same time, in order to meet with Iraqi citizens who had recently fled from Iraq to Kuwait. During the visit to Kuwait, the staff members met with a wide range of persons and received testimony, together with supplementary information in documentary and photographic form. Section III of the present report describes the results of the mission based on information received prior to and during the visit to Kuwait.

5. The second fact-finding mission took place from 24 to 30 July 1995, when two staff members from the Centre for Human Rights travelled to Lebanon in order to interview Iraqi citizens who had recently arrived in that country. Three days were spent in the town of Chtaura towards the Lebanese border with the Syrian Arab Republic in order to meet with recently arrived Iraqi citizens living in the Syrian Arab Republic. Section IV of the present report describes the results of the mission based upon information received prior to and during the visit to Lebanon.

6. On 4 September 1995, the Special Rapporteur submitted his first periodic report to the Commission on Human Rights pursuant to Commission resolution 1995/76 (E/CN.4/1996/12), in which he studied the texts of two recent decrees of the Revolution Command Council that were reported to grant amnesty to specified categories of persons. A summary of the report, highlighting the Special Rapporteur's analysis and comments with regard to the importance of the decrees and their impact is reproduced in section II of the present report.

7. Among the most visible and disturbing policies of the Government of Iraq, affecting virtually the entire population, are those that concern the rights to food and health. In section V of the present report, the Special Rapporteur addresses the deteriorating situation regarding these most vital of economic rights and offers his conclusions as to the responsibilities of the Government of Iraq.

8. In section VI of the present report, the Special Rapporteur reports upon the referendum held in Iraq on 15 October 1995. In his analysis, he applies the international human rights standards to which Iraq has voluntarily ascribed in the area of civil and political rights.

9. Aside from the matters addressed below, it is again to be observed that there are no signs of improvement in the general situation of human rights in Iraq. The details of this overall assessment of the situation of human rights in Iraq, taking into account ongoing developments, will be given in the Special Rapporteur's report to the Commission on Human Rights at its fifty-second session.

II. REVOLUTION COMMAND COUNCIL DECREES NOS. 61 AND 64

10. On 28 July 1995, the Government of Iraq transmitted, through a note verbale from its Permanent Mission in Geneva addressed to relevant special rapporteurs and working groups of the Commission on Human Rights, the text of Revolution Command Council decree No. 61 dated 22 July 1995, which "remits the remainder of the sentences of Iraqi prisoners and detainees, commutes death sentences to life imprisonment and pardons persons liable to the penalty of amputation of the hand or the auricle of the ear". By a second note, dated 2 August 1995 from the Permanent Mission of the Republic of Iraq to the United Nations Office at Geneva addressed to the Centre for Human Rights, the Government of Iraq transmitted the text of Revolution Command Council decree No. 64 (bearing the signature of Saddam Hussein as Chairman of the Council and entering into force on 30 July 1995), which was said to grant "a general amnesty to Iraqis living in or outside Iraq in respect of the penalties imposed on them following their conviction for political reasons". The full texts of decrees Nos. 61 and 64 are reproduced in the annex to the Special Rapporteur's first periodic report (E/CN.4/1996/12).

11. The decrees introduce considerable opportunity for arbitrariness and abuse at the hands of undoubtedly biased persons. For example, paragraph II of decree No. 61 stipulates that reductions of sentences will apply only in such cases where the relatives of those imprisoned "undertake to ensure their good conduct" and "provided that the said undertaking is endorsed by a member of the Arab

Baath Socialist Party". Similarly, paragraph VI gives an advantage to those who have "obtained an understanding of the revolutionary course of action" while paragraph VIII, subparagraph 3, effectively conditions exemption from applicable amputation decrees upon repentance. For example, in terms of the independent and impartial administration of the criminal justice system normally required, one may wonder on what basis members of the Arab Baath Socialist Party are to play a determinative role.

12. If careful consideration is given to the many conditions and exclusions contained in the decrees, it will be seen that large numbers of persons apparently addressed by the decrees would not in fact enjoy any benefit. For example, the decrees apply only to persons "convicted" or "sentenced", presumably in a formal juridical sense, subsequent to court proceedings and orders. Yet large numbers of persons remain detained in Iraq, and are subject to punishment, in the absence of formal or proper convictions or sentences. These persons would not enjoy the benefit of the decrees.

13. Another limiting aspect of decree No. 64 is that it expressly applies only to "citizens" and "Iraqis" rather than anyone having been found guilty of commission of the offences irrespective of nationality. The application of paragraphs II and III of the decree are thus discriminatory in so far as they exclude non-nationals, whilst the Government has previously stripped hundreds of thousands of persons of their "Iraqi" nationality by asserting their "Persian ancestry".

14. Regarding the explicit exclusions to be found in the decrees, persons convicted of "espionage" are excluded from application of the decrees. This is a particularly important exclusion in the case of Iraq because so many laws refer to "espionage" and because the crime applies to a wide variety of behaviour.

15. Finally, there are evident shortcomings within decree No. 61 as regards the continuing effects of decrees prescribing amputations and branding. Specifically, paragraph III of decree No. 61 exempts from the penalty of amputation only those persons who have served two years in custody or detention; presumably, those having served less than two years will be subject to amputation, which normally is applicable upon conviction. In addition, since paragraph VIII.3 effectively exempts from amputation of the auricle of the ear only persons who have given themselves up "repentantly", presumably those who refuse to make such a declaration will still suffer the inhuman and degrading punishment.

16. The most important context for analysing the recent amnesty decrees is that of the overall legal and political order prevailing in Iraq. It is precisely the existence of several repressive Iraqi laws that quells freedom of thought, information, expression, association and assembly through fear of arrest, imprisonment and other sanctions. This repression will not be affected by the latest amnesty decrees. So long as powers of arbitrary arrest, detention and imprisonment exist, "amnesties" will inspire little confidence. This is especially so for "political" offences, while decrees such as No. 840 of 4 November 1986 continue to make critics and insulters of the President, the Baath Party and the institutions of government subject to the death penalty and

Baath Party members are granted impunity for any harm done to property or persons (including death) while pursuing opponents of the Government. Simply, while there is no effective rule of law in Iraq, there will be little confidence in the reliability of "amnesty" decrees.

17. It is for this reason that the Special Rapporteur has previously called for the abrogation of such repressive laws as those establishing the offence of "insulting" the leadership and institutions of government and the Baath Party, the granting of impunity for those causing harm to the person or property of "subversives", "saboteurs" and other perceived opponents of the Government or the Baath Party and the inhuman punishments of amputation and disfigurement examined by the Special Rapporteur in previous reports (see in particular, E/CN.4/1995/56).

III. THE MISSION TO KUWAIT

A. The fate of persons missing as a result of the Iraqi occupation of Kuwait

18. As noted in paragraph 4 above, two staff members from the Centre for Human Rights, acting as human rights monitors in the framework of Commission resolution 1995/76, undertook a visit to Kuwait from 22 to 30 June 1995. During their stay in Kuwait, the monitors met with a wide variety of persons of special relevance to the continuing problem of Kuwaiti and third-country nationals who disappeared during or subsequent to their alleged arrest and detention by Iraqi forces occupying Kuwait between 2 August 1990 and 26 February 1991. Among those interviewed were representatives of the Kuwaiti National Committee for Missing and Prisoner of War Affairs and family members of the Kuwaitis who had disappeared.

19. The fate of Kuwaitis and other persons who disappeared during Iraq's occupation of Kuwait forms part of the mandate of the Special Rapporteur as a result of paragraph 4 of Commission resolutions 1992/71 and 1993/74, paragraph 5 of Commission resolution 1994/74 and paragraph 3 of Commission resolution 1995/76. The Special Rapporteur briefly addressed this aspect of the mandate in two reports to the Commission (E/CN.4/1993/45, para. 49, and E/CN.4/1994/58, para. 32) and more extensively in his last report to the General Assembly (A/49/651, paras. 12-33 and 99).

20. As previously stated by the Special Rapporteur (see A/49/651, paras. 31 and 32), there can be no doubt that many persons disappeared during or subsequent to the Iraqi occupation of Kuwait. In so far as the disappearances occurred during the Iraqi occupation of Kuwait, there can also be no doubt of the general responsibility of Iraq under international law for the fate of these persons and the effects on their families. Detailed testimonies and other corroborative evidence further establishes the specific responsibility of Iraqi forces and authorities in relation to many individual cases. However, from the point of view of the relations of those who disappeared, the preoccupying question is the present whereabouts of their loved ones: are these persons still detained in Iraq, as has been claimed, or, in the event that they have

been released or have perished, what details can be communicated to the distraught families regarding the release or death of former detainees?

21. Certainly, the human tragedy of this continuing matter is enormous both in terms of any remaining detainees who are no doubt suffering untold emotional anguish and possibly enduring physical hardship and in terms of the relatives of the missing persons who are suffering severe mental distress because they are without knowledge of the whereabouts and condition of their loved ones. The relatives of the missing persons also report that they are regularly subjected to extortion attempts that play upon their desires to learn anything of those missing. As a result of the never-ending uncertainty and the unresolvable pain and depression, the social lives, employment performance and personal relationships of family members are all damaged.

22. In accordance with the applicable rules of international law, Iraq must account for those who were arrested by its forces. If Iraq were still to be holding prisoners of war (POWs) and civilian internees, a premise the Iraqi authorities deny, several obligations arising under international humanitarian law and international human rights law would be breached.

23. In addition, the Government of Iraq has, to the knowledge of the Special Rapporteur, failed to demonstrate a genuine concern for those who are still missing in so far as it has yet to participate fully and in a cooperative spirit with both Governments and international humanitarian organizations that are seeking to resolve the cases on behalf of the next of kin. In particular, the Government of Iraq failed for a period of two years even to attend the meetings of the Tripartite Committee established pursuant to the cease-fire agreement that ended the armed conflict following the liberation of Kuwait.

24. However, as from July 1994, the Government of Iraq renewed its participation in the framework of the Tripartite Committee, as well as in the framework of a Technical Subcommittee that was established by the Tripartite Committee on 8 December 1994, and has undertaken to conduct the detailed technical work relating to investigations and inquiries concerning the missing persons. As of 7 April 1995, the Technical Subcommittee had processed 168 dossiers, on which the Government of Iraq had provided preliminary replies based on intermediate investigations regarding 70 individual files. In addition, the mortal remains of one missing person were repatriated to the Kuwaiti authorities.

25. For almost all cases to which the Government of Iraq has so far responded, it is reported to have provided evasive replies regarding the individual files. Indeed, based upon information received during the mission, despite the Iraqi authorities admitting to having arrested and detained some of the missing Kuwaitis, the Government of Iraq claims to be ignorant of the specifically relevant authority or military unit operating at the time and place where the person disappeared; the Government claims that the files that could have been useful to determine the fate of the missing persons were destroyed during the retreat of the Iraqi authorities from Kuwait and that many of these units were subsequently dissolved, with many of their members having retired from the armed forces. Therefore, the Government of Iraq maintains, upon information collected verbally by the responsible officers after the 1991 uprising in the south of

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Iraq, that the detainees escaped by exploiting the confusion that prevailed in the southern governorates at the time.

26. Based upon information received by the Special Rapporteur, the specific military units responsible in the areas where the arrests and disappearances occurred have now resorted to pro forma responses, admitting only to having arrested and detained some of the still missing Kuwaitis. Some have also participated in initial investigations into some of the cases.

27. Noting that the Government of Iraq is showing to a certain extent its willingness at long last to collaborate with the Tripartite Committee, the Special Rapporteur stresses that Iraq is under an obligation to provide substantive replies on the individual files without further delay. It is to be recalled in this connection that, in its resolution 46/135 of 17 December 1991, the General Assembly called upon Iraq in the following specific terms to cooperate in the search for those who had disappeared:

"4. ... to provide information on all Kuwaiti persons and third-country nationals deported from Kuwait between 2 August 1990 and 26 February 1991 who may still be detained and ... to release these persons without delay;

"5. ... to provide ... detailed information on persons arrested in Kuwait between 2 August 1990 and 26 February 1991 who may have died during or after that period while in detention, as well as on the site of their graves;

"6. ... to search for the persons still missing and to cooperate with international humanitarian organizations, such as the International Committee of the Red Cross, in this regard;

"7. ... to cooperate and facilitate the work of international humanitarian organizations, notably the International Committee of the Red Cross, in their search for and eventual repatriation of Kuwaiti and third-country national detainees and missing persons."

28. Notwithstanding Iraq's recent but limited steps towards full cooperation in this tragic matter, the Special Rapporteur cannot avoid noting that Iraq failed:

(a) To inform families about the whereabouts of persons arrested in Kuwait, or to give arrested persons the right to contact their families;

(b) To provide information about death sentences imposed on POWs and civilian detainees, as required by articles 101 and 107 of the Third Geneva Convention of 12 August 1949 and articles 74 and 75 of the Fourth Geneva Convention of 12 August 1949;

(c) To issue death certificates for deceased POWs and civilian internees and to provide information about graves in accordance with articles 120 and 121 of the Third Geneva Convention of 12 August 1949 and articles 129 to 131 of the Fourth Geneva Convention of 12 August 1949;

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To comply at least with this, the Government of Iraq faces a heavy burden of doing everything within its powers to explain the fate of the hundreds of persons who still remain missing as a result of its illegal occupation of Kuwait.

B. Information regarding other violations of human rights

29. Other information (mainly testimonies from asylum-seekers) received in Kuwait by the monitors assisting the Special Rapporteur paints an even grimmer picture of life in southern Iraq. Testimonies focused upon the climate of oppression and the dire economic and social situation in the south of the country. The second of these issues will be taken up in section V below.

30. According to testimonies received, penal amputations continued to be enforced in southern Iraq in the spring and early summer of 1995. Military deserters who had escaped to Kuwait stated that they saw many soldiers with their ears cut off. Two young men who were interviewed had suffered the penalties themselves: one had both his ears entirely amputated in a rough fashion and had a "-" sign scar in the middle of his forehead, which he stated was the result of a surgical cut applied at the time of the amputation of his ears, while the other young man had a large and dark "+" sign branded between his eyebrows and had large inflamed scars running up and down his arms and on his body from battery acid that had been poured on him by military officers as an alternative to cutting off his ears; the officers had also fractured the skull of the second soldier with a metal pipe, resulting in a speech impediment and recurring dizzy spells. The deserter who had had both his ears amputated testified that he had been given a general anaesthetic in a prison hospital where the operation was performed and where he had remained without medicine for weeks afterward; his bandages were changed only every two weeks. He further testified that he was among several hundreds of others who had been brought from throughout Amarah, Nassiriyah and Basrah governorates in order to have their ears cut off in the prison hospital. While some were said also to receive the surgical cut across the forehead as had the witness, others were said to have been branded on the forehead with an "X". Many were said to have acquired infections, received no treatment and died. Another soldier who claimed to have had access to military detention centres as part of his work testified to having seen at least 30 soldiers in various places who had had their ears cut off, stating that they were bandaged and bleeding, with some having acquired infections for which they were prohibited treatment and for which, in any event, there were no medicines available. These testimonies were supported by that of a medical doctor who had fled from Basrah, where he confirmed that many young men had been brought to the hospitals to have their ears cut off: one ear for the first desertion, both ears for a second offence, and branding of the foreheads for all. While anaesthetics were used for the operations, which were described as an irregular cut followed by a suture, post-operative treatment was forbidden; one victim was said to have died of septicemia. For the brandings, the technique employed was a cauterized "-" sign across the forehead. The doctor stated that he had heard from other doctors that a total of 150 amputations were performed in January 1995. The doctor also confirmed that they were forced to perform the operations or receive heavy penalties for

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refusal: one doctor who refused was arrested by the Mukhabarat for two days and returned compliant, while another disappeared.

31. The testimonies concerning amputations confirm what the Special Rapporteur had reported in his last report to the General Assembly (A/49/651, paras. 44-71 and 99 (j)). They also demonstrate the arbitrary and irregular fashion in which the barbaric decrees have been implemented.

32. Other testimonies indicated that arbitrary arrests and detentions remained widespread in southern Iraq. Several witnesses testified that, upon arrest, they had been beaten and badly mistreated. All witnesses testified that they had fled because of the constant fear in which they lived and that the economic deterioration had increased the arbitrary interference of security and Baath Party officials in the daily lives of the citizenry. Bribery and corruption were also said to be rife. There was said to be no rule of law.

33. The witnesses were unanimous that the food and health situation, and the socio-economic situation in general, had become precarious. Most stated that they were preoccupied in their daily lives with achieving a subsistence-level existence. The medical doctor who was interviewed confirmed that protein and calorie deficiencies were common among children, as were cases of anaemia and related diseases. The doctor lamented the unavailability of many medicines and the emergence of a flourishing, but very expensive, black market for drugs. Although the doctor had seen no deaths as a result of malnutrition, he stressed that the situation was deteriorating day by day prior to his departure in the spring.

34. In general terms, one witness described Iraq as "one huge prison" where all within huddled in fear. Another witness pleaded that the United Nations should ignore the Government of Iraq and "take food and medicine directly to the people". All felt that Iraqi society was shattered.

IV. THE MISSION TO LEBANON

35. The testimonies received in Lebanon were mainly from refugees who had recently fled from the central part of Iraq. All gave testimony about a general state of repression and fear throughout Iraq and all indicated that the overall socio-economic situation was poor, with dire consequences for the most vulnerable in terms of access to food and health care.

36. In general, life was said to be harsh and expensive. Government ration cards were said to be good for only 10 days in early 1995. Two witnesses claimed to have seen food aid from the United Nations being sold on the black market; one witness testified to having seen United Nations Children's Fund (UNICEF) and World Food Programme (WFP) trucks in Najaf and Karbala offloading at government distribution points only to see some of the food appear on the black market later. Expired goods (including milk and medications) were also said to be distributed through the Government of Iraq with the Government accusing the United Nations of dumping the goods on a desperate people.

37. Two witnesses testified to having seen army deserters who had had an ear cut off and had been branded on the forehead. The desertions were blamed on the extremely low pay for conscripted soldiers, which had forced many to desert in order to help their families to survive. Now many have been disfigured, while others are said to have died as a result of the initial traumas or subsequent untreated infections. Those who survive are said to hide in shame. One witness said that some victims and their families had sought revenge for the disfigurements by trying to kill the doctors and Baath Party officials who had performed or ordered the amputations; several such incidents were said to have taken place in Nassiriyah.

38. Many witnesses testified about the general breakdown in law and order: bribery, corruption and thievery were said to be the main problems. Matters of corruption ranged from petty to issues of life and death. One witness stated that "even if you kill someone, you can still buy your freedom by paying the judge". Another witness testified that higher education had become completely corrupt with professors, who were very poor, readily accepting bribes to change grades, to give out the questions to examinations in advance or just to grant a passing grade to a student who had already answered all the questions correctly. Admissions are said to be controlled by the Baath Party and the children of important Baathists are said to get privileged entrances and advancements throughout the system: easier admissions, easier passes and better grades. Another witness stated that the problem of bribery had reached such a stage that those who were to be executed could buy their freedom from the executioner, but then someone else had to be executed in their stead to ensure that a body was surrendered by the executioner as per instructions. The general decay in order, paralleled by an increase in corruption, has resulted in a confused and thoroughly arbitrary system where it is said to be a regular occurrence that the wrong people are arrested, detained, tortured and even executed - without apology or consequence.

39. Arbitrary arrests were said still to be common throughout the country, with people still being taken directly from their homes. The Mukhabarat is said to be still preoccupied with trying to find everyone who participated in the March-April 1991 uprisings.

40. Upon arrest, cruel tortures and gross mistreatment still occur. Two witnesses gave testimony, corroborated by their own scars and disabilities, about terrible tortures that they suffered over long periods of time. One witness testified that, during three and one half years of arbitrary detention (first in the General Directorate of Security in Baghdad and then in Radwanayah prison) prior to his release in the spring of last year, he was regularly hanged from his hands, which were bound behind his back, with someone pulling down on his body so that his rotator cups were destroyed and he can now rotate his arms backwards over his head but he can carry hardly any weight. In addition, he was badly beaten on his back, causing some of his vertebrae to become displaced and resulting in a serious curvature of the spine: he is now deeply bowed when he stands. Further, he was forced on several occasions to sit on a bottle for minutes at a time causing bleeding and rectal damage that required medical treatment and, on one occasion, he suffered electric shocks to his tongue and genitals. The second witness claimed to have been imprisoned and brutally tortured over a 12-year period in the Mukhabarat office in Baghdad, Fadhliyah

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detention centre and Badush prison in Mosul. Among the astounding number and variety of tortures he claims to have suffered are the following: he was hanged by his feet from a rotating fan and beaten with cables by Mukhabarat officers; he was forced to sit on bottles of varying sizes for various periods of time; he was once made to stand in a large tub of filthy waste water up to his nose so he could hardly breathe; he was once sprinkled with sulphuric acid from a syringe during an interrogation; during another interrogation, he had a heavy acidic oil poured on one arm; he was administered electric shocks on different occasions, once while sitting in a chair with his feet in a shallow bucket of water, causing his feet to inflame and making it difficult to walk; he once had a small leather strap tied around his penis to prevent him from urinating while, at the same time, he was forced to drink large quantities of sugared water; he was several times forced to crouch for long periods in a tiny box; and he was raped numerous times. Having been sentenced to life imprisonment for espionage and membership in the Islamic movement, the witness claims to have been liberated during an uprising by the al-Jabouri clan in Mosul in 1994 and subsequently fled the country. The witness bears numerous scars and suffers disabilities that are consistent with his testimony.

V. THE RIGHTS TO FOOD AND HEALTH

41. The Special Rapporteur has commented upon the rights to food and health in all but one of his previous reports to the Commission on Human Rights and to the General Assembly (A/46/647, annex, paras. 52-55 and 95-98; E/CN.4/1992/31, paras. 81-83, 138, 143 (w), 145 (o) and (p) and 158; A/47/367, para. 14; A/47/367/Add.1, paras. 6-14, 56 (a)-(c) and 58 (a)-(c); E/CN.4/1993/45, paras. 67-72 and 185; A/48/600, annex, paras. 33-42, 44-46, 58-59 and 62-88; E/CN.4/1994/58, paras. 72-79, 152 and 186; A/49/651, annex, paras. 89-98; and E/CN.4/1995/56, paras. 44-47, 54, 67 (m) and 68 (c)). Since his initial appointment in June 1991, the Special Rapporteur has observed the constantly deteriorating situation of the population. This dire situation has met with the steadfast refusal of the Government of Iraq to take advantage of resources available to alleviate the suffering of the people - as the Government is obliged to do under international law. As such, there can be no doubt that the policy of the Government of Iraq is directly responsible for the physical and mental pain, including long-term disabilities, of millions of people and the death of many thousands more.

42. Since the Special Rapporteur's last report to the Commission on Human Rights (E/CN.4/1995/56), the Security Council adopted resolution 986 (1995) of 14 April 1995, which affords Iraq the opportunity of selling oil up to the amount of US\$ 1 billion every 90 days, on a renewable basis, in order to purchase essential food and medical supplies for humanitarian purposes. As was the case with the "food-for-oil" formula presented pursuant to Security Council resolutions 706 (1991) and 712 (1991), the Government of Iraq has rejected the offer made in resolution 986 (1995), despite the fact that the total available annual sale would be US\$ 4 billion, i.e. about one quarter of Iraq's total export sales prior to its invasion of Kuwait and the imposition of United Nations economic sanctions. The United Nations offer received unfavourable responses from the Government from its inception and was turned down completely by both the Iraqi Cabinet of Ministers and the National Assembly. It is

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interesting to note that, immediately after Security Council resolution 986 (1995) was adopted, market prices of essential food and other commodities improved significantly and the free market value of the United States dollar dropped by 50 per cent against the Iraqi dinar from ID 1,200 to ID 600. Such a sustained drop in prices would have had the effect of making more food and other essential commodities available to those in need. However, the drop in prices and exchange rates was short lived following the negative response from the Government and the appearance of several Ministers and other top officials on television who categorically decried and rejected resolution 986 (1995) on unspecified grounds of "sovereignty infringement and interference in the internal affairs of Iraq". Senior officials also argued that the new initiative was designed to prolong the sanctions - an assertion that flies in the face of the fact that it is for Iraq alone to comply fully with the terms of the relevant Security Council resolutions and end the sanctions regime forthwith.

43. As a consequence of the Government of Iraq's intransigence on the "food-for-oil" formula, the economic situation continued to deteriorate and prices of essential food items and basic living commodities fell even further beyond the reach of a large part of the population. According to the Department of Humanitarian Affairs mid-term review of the United Nations consolidated inter-agency humanitarian cooperation programme for Iraq, dated 21 September 1995, in the last six months "the humanitarian situation deteriorated in all sectors, particularly in the areas of nutrition and health. Living conditions remain precarious for at least an estimated 4 million persons". Essential food prices have continued to escalate drastically, especially after the release of the last reports of the United Nations Special Commission monitoring the dismantling of Iraq's nuclear, chemical and biological capacities; prices of wheat flour, rice, vegetable oil and sugar increased between 30 and 50 per cent on the free market. For example, the price of vegetable oil jumped from ID 800 to ID 1,200 per kilogram, the increase accounting alone for 15 per cent of the monthly salary of an average government employee. These large increases in the prices of food commodities must also be viewed in relation to the oppressive 616 per cent increase in the central and southern governorates in 1994, as reported by the Department of Humanitarian Affairs (see DHA News special edition, "1994 in review", p. 111). At the same time, the Department of Humanitarian Affairs reported in the same mid-term review, that the "purchasing power of the population has deteriorated further because of the continued depreciation of the Iraqi dinar from 1,000 to the dollar in April to 2,000 ID in September 1995" such that the "salaries of civil servants (averaging ID 5,000 per month after 50-70 per cent increments in August 1995) are inadequate for the purchase of basic food commodities".

44. The Government has continued distribution of its subsidized food basket at reduced levels for four essential food items, namely wheat flour, rice, vegetable oil and sugar. In October 1994, the basket was reduced by 37 per cent in terms of calorie intake, with the shortfall of over 50 per cent remaining unbridgeable for a large percentage of the population in view of the prohibitive food prices on the free market. This situation prevailed until just recently when, in celebration of his "endorsement" as President in the national referendum held on 15 October 1995, President Saddam Hussein was reported to have increased the rations. It is not clear how long this celebratory increase will continue. Prior to it, government rations met only 30 per cent of people's

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food needs with the Department of Humanitarian Affairs reporting that "an FAO-led crop and nutrition status assessment mission confirmed that the situation in Iraq was demonstrating pre-famine conditions".

45. The economic hardship affecting the population is being manifested in various ways. More and more families have been cramming roadways around Baghdad and other cities to sell personal belongings, furniture and even parts of their homes (e.g. doors, windows and cement blocks) in order to buy food. Child beggars and small-time traders are now a common sight in the capital and prostitution is said to be rising all over the country. Media reports also point to a flourishing trade in human organs as the desperate line up to sell a kidney in order to help their families to survive.

46. Although the number of privileged groups and persons appears to be declining, certain groups remain privileged by comparison to others, e.g. highranking military officers and Baath Party elite. This privilege is to be observed not only in the fact that the average salary of a civil servant is one half that of a military officer, but more importantly in the fact that members of the Baath Party and military officers enjoy their own food distribution network through cooperatives and they receive special salary allowances depending on their relationships with their supervisors and the extent of their support for the official policies of the Government. Of course, this is to say nothing of the bribes and "gifts" that government and Baath Party officials may obtain by virtue of the important administrative positions to which they may be assigned. Moreover, the inner circle of the leadership does not appear touched by any economic hardships affecting their access to food or health care.

47. It is also evident that there is discrimination within the country on a regional basis. The central cities of Iraq, especially Tikrit, Samara and parts of Baghdad, continue to enjoy preferred distribution of limited resources; while the infrastructure (including water purification and sewage systems) of Baghdad was rebuilt almost immediately after the war, that of the southern cities has continued to lag far behind. For example, according to a survey conducted by government agencies with the full support of UNICEF in April 1995 and released in July 1995, 50 per cent of the rural population in the central/southern part of Iraq have no access to potable water supplies. More distressingly, the same survey found that 90 per cent of the rural population in the southern governorate of Thiqr had no access to potable water supplies. An erratic electric power supply and a shortage of water has had a negative impact on public health, with adverse effects on vulnerable groups, especially children. One hospital in Najaf was found without water for three consecutive days. In addition, commodity prices in the southern governorates are much higher than in the central governorates, owing to the deteriorating modes of transport and the cost of distribution. In the northern governorate of Dohuk, which was cut off from the national power grid in August 1993 and had been receiving 12 MW of power per day from Turkey over the past few months, there has been almost no electricity since 23 June when, for technical reasons, the Turkish source of power was also cut off. The resulting non-availability of power during the summer months created enormous problems in the health and water sectors. According to the DHA News special edition, "1994 in review" (p. 112), severe

shortages of electricity also "prompted significant movement of people, placing greater strain on the humanitarian programme" last year.

48. Among the related health problems are the increasing levels of contaminated water as recorded by the ongoing UNICEF-sponsored water quality control programme. As a result, the number of cases of waterborne and diarrhoeal disease was seen to increase. Initial investigations by UNICEF had indicated that water was not being chlorinated as required, and subsequent follow-up revealed that UNICEF's chlorine powder had been put on sale in the market for domestic use - available in well-designed, locally printed packets and tins. This increase in corruption affecting the health and well-being of the population derives from the continuing economic pressures and the inability of the authorities to ensure proper use of humanitarian assistance.

49. In the face of the continuing deterioration of the food and health situation in Iraq in the last year, to say nothing of other forms of repression, many Iraqis sought to travel abroad to obtain food, health care or refuge. In response, the Government increased by 150 per cent the exit tax on all Iraqis travelling abroad; the fee was increased from ID 40,000 to ID 100,000 (i.e. almost two years' pay for an average government employee). In addition, skilled persons such as engineers, architects and doctors are required to post a guarantee of return in the amount of ID 1 million in the form of cash in a bank account or fixed property. This prohibitive exit tax forces many people to remain in Iraq to the detriment of their health and well-being.

50. Beyond the Government of Iraq's refusal to cooperate with the United Nations according to Security Council resolution 986 (1995), which proposes an increased sale of "oil for food", beyond the Government's restrictions on access to food and health in certain parts of the country and beyond the severe restrictions on exit from the country, the Special Rapporteur has received credible allegations that Iraqi forces have continued their attacks on the farming communities (with destruction of their crops and livestock) located along the internal frontier with the region of northern Iraq, from which the Government withdrew its administration in 1991. Similar allegations have been received concerning some attacks against farmers in the south of the country, resulting in the destruction of wheat and barley crops and livestock. These attacks negatively affect the internal food resources available for the rest of the population.

51. According to the Department of Humanitarian Affairs' mid-term review and the assessment mission of the Food and Agriculture Organization of the United Nations (FAO), both referred to above, Iraq's "overall food requirements" in 1995/96 amount to "about US\$ 2.7 billion". To keep alive 2.15 million of the most vulnerable people through 1996, a WFP News Update of 26 September 1995 states that US\$ 122.5 million is required. An earlier United Nations consolidated inter-agency humanitarian cooperation programme for Iraq appealed for a total of US\$ 135 million for the current six-month period (i.e. 1 October 1995-31 March 1996). The Special Rapporteur cannot help but underscore that the stated amounts are far below the resources available through Security Council resolution 986 (1995), even should the Government of Iraq finally take advantage of the opportunity to sell some oil for the good of the Iraqi people. Indeed, it is entirely within the means of the Government of Iraq

to respond immediately to the dire food and health needs of the people of Iraq either through full compliance with the Security Council resolutions establishing the sanctions or by cooperation with the United Nations pursuant to resolution 986 (1995).

VI. THE REFERENDUM OF 15 OCTOBER 1995

52. On 15 October 1995, a national referendum was held in Iraq on the question: "Are you in favour of Saddam Hussein assuming the post of President of the Republic of Iraq?" In order to analyse and understand the process and significance of the referendum in terms of applicable international human rights standards, it is necessary to consider the political context in which the referendum was held. In this connection, the Special Rapporteur refers to his previous comments on the rights pertaining to democratic governance in Iraq (E/CN.4/1994/58, paras. 80-86) and to the structure and abuse of power in the country (E/CN.4/1994/58, paras. 159-184).

53. The applicable international standards by which the 15 October 1995 referendum is to be assessed are those contained principally in article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights, to which Iraq is a party. Both article 21 of the Universal Declaration and article 25 of the Covenant stress the free expression of the will of the people as the basis for determining the legitimate representatives of the people. However, for the will of the people to be freely formed and expressed, a variety of other freedoms must be respected, in particular the freedoms of thought, conscience, religion and belief (as guaranteed under article 18 of the Covenant); opinion, expression and information (as guaranteed under article 19 of the Covenant); assembly (as guaranteed under article 21 of the Covenant); and association (as guaranteed under article 22 of the Covenant). One could easily also add other freedoms such as that of movement and respect for personal integrity and privacy rights. In other words, the possibility of non-manipulated and unimpaired formation of views and also the uninfluenced expression of those views must be guaranteed.

54. As the Special Rapporteur has previously commented in detail (see E/CN.4/1994/58, paras. 80-86 and 159-184), the conditions necessary to ensure that the free will of the people is the basis of the authority of government do not exist in the present legal and political order of Iraq. More specifically, the almost total control of information coupled with an all-pervasive and generalized fear among the population of severe sanctions for non-support of the prevailing order, maintained through abuses of power and facilitated by the absence of the rule of law in the country, combine to undermine and distort apparent expressions of the "will of the people" totally. While the Government purports that the referendum of 15 October 1995 was "free", the Special Rapporteur does not believe that the mere mechanical conduct of the formal process of voting can be equated with a genuine expression of the will of the people in Iraq. This is because the risk of being found in opposition to the President and the prevailing order is literally life-threatening: according to Revolution Command Council decree No. 840 of 4 November 1986, any person insulting the President of the Republic, the Revolution Command Council, the National Assembly, the Government or the Baath Party is subject to severe

penalties, including death. This kind of law placed in the hands of a totally intrusive security apparatus, unconstrained by any respect for the rule of law, means that virtually no citizen would risk demonstrating any opposition to the presidency or Government - or would do so at his mortal peril. Indeed, this conclusion is logical as long as there exists in Iraq such coercive forces as decree No. 840 or political attacks against, and killings of, perceived oppositional leaders (see, e.g., A/49/651, paras. 72-88).

55. Given the prevailing legal and political order in Iraq, the national referendum of 15 October 1995 confirmed nothing except the fact that, even amid heavy economic pressures, the government authorities are capable of organizing such an event in a period of only three weeks and achieving, according to Iraqi television, a 99.96 per cent "approval" of the President from a staggering participation rate of 99.467 per cent of the 8,402,321 eligible voters. Perhaps more noteworthy is the fact that the overwhelming results were achieved without the President once having to address the people, appear in public, make a single promise or in any sense campaign to win the approval of the electorate. The extremely high turn-out also indicates that the population was already fully identified and listed by voting district at the time the referendum was announced. This fact underlines the degree to which the government authorities are in control of the movement and activities of people within the country.

56. Regarding the conduct of the referendum, all eligible voters were reportedly sent a two-part ballot card prior to the referendum with the first part of the card requiring detailed personal identification and with the second part, detachable from the first, constituting the ballot itself. At the polling stations, voters were to present to the referendum administrators, in the presence of various Iraqi security forces and Baath Party officials, the first part of the ballot card together with official papers verifying their identity and eligibility, whereupon voters were directed to complete the second part of the card in a separate booth and then to place their completed ballots into an opaque sealed box. In the light of the overall political order in Iraq, but also in the light of the specific process at the polling stations, it may be appreciated that few if any voters would have felt confident to express their views against the President just after having formally presented themselves to security forces and Baath Party officials. Indeed, this may to large extent explain the remarkable fact that not one person voted against the President in the governorates of Karbala, Najaf, Misan, Muthana or Dhi Qar, while only 18 voted against in Basrah, i.e. virtually no one voted against the President in the southern governorates that had been the scene of bloody uprisings in April 1991. However, this seemingly paradoxical voting result may well be an entirely rational result based on fear resulting from the harsh repression of April 1991 and its aftermath; the population has now been totally subdued, made to conform, become economically exhausted and totally dependent. In such circumstances, it would appear natural to follow one's basic survival instincts and vote rationally in favour of the President, although this "rational" vote could hardly be construed as an expression of the genuine will of the people.

57. One important fact is that the participating voters hardly represented the totality of the relevant Iraqi population. To begin with, between 2 and 3 million eligible voters in the northern governorates of Arbil, Dohuk and Suleimaniyah did not participate because the central authorities withdrew from

the region in October 1991, leaving it to its own local administration. A second group of about 2 million Iraqis also was not taken into account by the referendum: these persons fled or were expelled from Iraq and now live outside their country precisely because of President Saddam Hussein and his policies; for the most part, these people voted against Saddam Hussein with their feet.

58. In trying to understand the significance of the referendum, which is, in fact, the first time in Saddam Hussein's presidency that he has ever gone directly to the people, the Special Rapporteur notes the remarks of Deputy Prime Minister Tariq Aziz, as reported by the Iraqi News Agency in Baghdad on 17 October 1995, who stated that the referendum was part of a process of moving "from revolutionary to constitutional legitimacy". Without fully understanding the notion of "revolutionary legitimacy" as it applies to a Government that has prevailed for well over a quarter century, the Special Rapporteur understands from Mr. Aziz's remarks that Iraq is certainly not a State with constitutional legitimacy, i.e. Iraq is not a State under the rule of law. Certainly, this admission by Mr. Aziz only confirms what the Special Rapporteur has observed since he first took up his mandate: in so far as the prevailing legal and political order in Iraq does not respect the rule of law, Iraq is in violation of its international obligations in the field of human rights law. However, in relation to the internal political regime within Iraq, it would appear that the logic of the present "revolutionary legitimacy" would not have required Saddam Hussein to relinquish the presidency even if he had not succeeded in obtaining an "endorsement" from the people: he could simply have continued to lead the revolution as he had been doing so far. If this means that the referendum had no legal implication within the State, then what was the motivation for the event? By this analysis, it would appear that the referendum had little to do with domestic legitimacy or respect for human rights (indeed, it was a mockery of international human rights standards), but more to do with an external political agenda. In the view of the Special Rapporteur, this was the significance of the referendum of 15 October 1995.

VII. CONCLUSIONS

59. From his analysis of Revolution Command Council decrees Nos. 61 and 64, the Special Rapporteur concludes that their heavily conditioned nature greatly reduces their possible value to the addressees. Moreover, in the absence of far greater change in the legal and political order of Iraq, especially the abrogation of repressive laws quelling freedoms of thought, information, expression, association and assembly, decrees Nos. 61 and 64 merit virtually no confidence. In the light of the legal system and political situation that prevail in Iraq, and barring the abrogation of existing laws, the effect of the so-called "amnesty" decrees cannot be considered a step towards liberalization of the government system in accordance with the obligations undertaken by the Government of Iraq.

60. With respect to the several hundred persons who still remain missing as a result of the illegal Iraqi occupation of Kuwait in 1990 and 1991, the Special Rapporteur reaffirms his opinion that the Government of Iraq is fully responsible for the fate of these persons and must take every step to assist in determining their exact whereabouts or fates. The Special Rapporteur concludes

that the Government's resumption of participation in the Tripartite Commission is a positive step that needs to be followed up by full, open and energetic cooperation aimed at resolving the outstanding cases without any further delay.

61. On the subject of the amputation decrees, which are still in force within Iraq notwithstanding decrees Nos. 61 and 62, the Special Rapporteur concludes that they remain gross violations of human rights and an offence to the population as a whole and, in particular, to the individuals who must endure their cruel and unusual punishments.

62. With regard to the rights to food and health, the Special Rapporteur emphasizes again the responsibility of Iraq, pursuant to article 2 of the International Covenant on Economic, Social and Cultural Rights, to which Iraq is a party, "to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources" to alleviate the suffering of the people.

63. As concerns the national referendum of 15 October 1995, the Special Rapporteur concludes that the result in no way reflects the genuine will of the people as required by article 21 of the Universal Declaration of Human Rights and article 25 of the International Covenant on Civil and Political Rights. To the contrary, in the prevailing legal and political order in Iraq with life-threatening laws applicable to persons expressing any opposition to the Government, the conduct of the referendum made a mockery of relevant international human rights standards.

VIII. RECOMMENDATIONS

64. The Government of Iraq should immediately abrogate any and all decrees that prescribe cruel and unusual punishment or treatment.

65. The Government of Iraq should immediately take every necessary step to abolish the practices of torture and cruel and unusual punishments and treatment.

66. The Government of Iraq should step up its cooperation with the Tripartite Commission aiming to discover the whereabouts or resolve the fate of the several hundred Kuwaitis and third-country nationals who disappeared under the illegal Iraqi occupation of Kuwait in 1990 and 1991.

67. The Government of Iraq should immediately cooperate with the United Nations to organize a sale of oil in order to purchase desperately needed humanitarian goods as authorized by Security Council resolution 986 (1995).

68. The Government of Iraq should immediately abrogate all laws penalizing the free expression of competing views and ideas and should take all necessary steps to ensure that the genuine will of the people is the basis of the authority in the State.
